



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

March 4, 1997

Ms. Jennifer Soldano
Associate General Counsel
Department of Transportation
DeWitt C. Greer State Highway Bldg.
125 E. 11th Street
Austin, Texas 78701-2483

OR97-0475

Dear Ms. Soldano:

You have asked if certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 104265.

The Texas Department of Transportation (the "department") received a request for a "certified copy of the Appropriations Bill concerning the Texas department of Transportation for 1987 and the similar Budget information for Hidalgo County for the same year." You state that you informed the requestor information concerning the Appropriations Act could be obtained at the Texas State Library.¹ You assert that responsive information concerning Hidalgo County is protected from disclosure pursuant to section 552.103(a), because the department has been sued for negligence in an accident that occurred in 1987 in Hidalgo County.


To show that section 552.103(a) is applicable, a governmental entity must show that (1) litigation is pending or reasonably anticipated and (2) the information at issue is related to the litigation. *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 (1990) at 4. You have shown that litigation involving the department is pending. You submitted to this office a document titled "District and County Statistics." The document provides county construction and maintenance expenses for fiscal year 1987, on a county by county basis. We agree that the entry for Hidalgo county is related to the litigation and may be withheld from disclosure pursuant to section 552.103(a).

¹We note that the department is not required to provide copies of information that is commercially available to the public. Gov't Code § 552.027(a). However, section 552.027(c) of the Government Code provides that a governmental body must allow public access to "information in a book or publication that is made part of, incorporated into, or referred to in a rule or policy" of the governmental body.

In making this determination, we assume that the document titled "District and County Statistics" and the information contained in the document has not been published or otherwise released to the public. Gov't Code § 552.007 (prohibiting selective disclosure of information). We further assume that the document was not disclosed or adopted in a public meeting. *See* Open Records Decision No. 551 (1990). If the document has been made public, no portion of it may then be withheld from disclosure pursuant to section 552.103(a). We also assume that the opposing party in the pending litigation has not had access to the information because once information has been obtained by the opposing parties to the litigation, no section 552.103(a) interest exists with respect to that information. Open Records Decision No. 349 (1982) at 2.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Ruth H. Soucy
Assistant Attorney General
Open Records Division

RHS/ch

Ref.: ID# 104265

Enclosures: Submitted documents

cc: Mr. Argentina Marmolejo
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(w/o enclosures)

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